



May 10, 2006

TO: Transportation Commission
47308

FROM: Douglas B. MacDonald
47316

SUBJECT: Hood Canal Bridge Graving Dock Report Summary

On April 28, 2006, the first concrete for one of the new pontoons for the Hood Canal Bridge Replacement project was poured at the Concrete Tech facility in Tacoma.

This is precisely 493 days after work at the graving dock site at Port Angeles was abandoned in December 2004. It is a tribute to the work of WSDOT staff, the contractor and others that in that span the entire work program for the pontoons has been brought from a complete stop to this milestone point.

The graving dock story, however, must also unhappily note that had everything gone as planned in Port Angeles, some five months after the groundbreaking in Port Angeles in August 2003, and 28 months ago, this point would have been reached with a concrete pour in a new graving facility in Port Angeles.

Whether denominated as the Hood Canal Graving Dock misadventure or the Tse-whit-zen Village re-discovery, the substantial delay and added cost to the bridge rehabilitation project is only a small part of what the events at Port Angeles now represent. Now this experience is marked as a major moment in cultural discovery that, though burdened with pain of many kinds, have contributed much more than a trove of archaeological artifacts to our search for meaning in our past and our present.

These reflections introduce our effort this month to present to the Commission a long-awaited report answering a request initially made by Governor Gregoire to recount the graving dock experience and the lessons to be learned from it.

Contents of this report

What does our report attempt to do?

This report tells the story largely through a chronology that is built of the participants' words of the moment. Probably at the expense of dramatic narrative, we use the actual

text of letters, reports, contemporaneous newspaper articles and other documents to draw the outlines of events. One of our goals indeed has been to capture and map the documentary record of the complex activities into which we all were drawn. This allows others to go to the same sources we have used, either to verify our interpretations or to offer their own if they vary from ours.

There are seven chapters.

Chapter 1

Chapter 1 provides the background for understanding the development of the Hood Canal Bridge East Half replacement project. It documents the urgency of the project in relation to the deteriorated condition of the sections of the bridge not replaced in 1982 after the west-half bridge inking and it tells the history of the project's development at WSDOT and with the legislature.

Chapter 2

Chapter 2 tells the story of gaining the environmental permits and approvals related to the project. Some of this work preceded the project's designation in 2002 as one of the pilot projects to be conducted under the permit streamlining agenda of the Transportation Permit Efficiency and Accountability Committee (TPEAC). In connection with TPEAC, a multi-agency Inter-Disciplinary Team for the bridge project was formed in 2002. That team focused particularly on issues of conforming the project with requirements of the Endangered Species Act. That exercise pushed WSDOT away from its original expectation that the pontoons would be built at an existing facility arranged for by the eventual bridge contractor (most likely the Concrete Tech facility in Tacoma). The revised course arising from the Inter-Disciplinary Team brought two elements to the program. First, a *new* facility would be developed in order to affect fewer impacts to endangered salmonids than the ESA permitting agencies thought would occur at Concrete Tech. And second, for reasons that are explained in detail in the chapter as to why a contractor would not take on the project with the uncertain risks of locating and permitting such a facility, those risks of developing such a facility had to be undertaken by WSDOT rather than relegated to a contractor, as would be the case if an existing facility were used.

No one participating in the Inter-Disciplinary Team intended the unexpected consequences that followed. No one expected that "solving" the Endangered Species Act compliance issues raised by the environmental regulators would give rise to a major problem for the project in relation to cultural resource impacts and issues at the Port Angeles graving dock site.

In any case, this chapter concludes with a short summary of why it was in the best interests of taxpayers under the circumstances for WSDOT to develop its own graving

dock rather than use an existing facility. This chapter also concludes that the forces in administering the Endangered Species Act that caused WSDOT to take that course rather than hold to its initial intention to charge a contractor with using an existing facility probably would have brought this result to the project whether or not the TPEAC Inter-Disciplinary Team had become the forum for the permitting discussions.

Chapter 3

Chapter 3 describes the specific steps that led to the identification and selection of the Port Angeles site in the months June to November 2002. Important roles were played by the Inter-Disciplinary Team, WSDOT and civic interests in Port Angeles that promoted the site. (Ultimately, the City of Port Angeles granted a permit for use of the site under its Shoreline Substantial Development ordinance.) The seeming suitability of the site to meet Endangered Species Act concerns, the desire of civic interests to see the program in Port Angeles, and WSDOT's hope that a new facility in Port Angeles could do double-duty as the eventual location for fabrication of new pontoons for the future SR 520 Bridge Rehabilitation Project, tipped the balance against the Concrete Tech facility and in favor of Port Angeles.

Chapter 4

Chapter 4 describes in detail the initial assessment, conducted late in 2002, of the Port Angeles site for cultural resources preceding the advertisement of the project for construction and the ultimate construction award in August 2003. This is the cultural resources assessment performed by a WSDOT consultant that failed to provide the alert to presence and significance of what the site ultimately would yield. In hindsight the cultural resources assessment has been much criticized. WSDOT accepts and agrees with many facets of that criticism, specific features of which are described in detail.

This chapter also describes the efforts surrounding the cultural resources survey to engage the Lower Elwha Klallam Tribe both in the survey itself and in the conclusions the survey reached, all of which was reported to the Tribe. That process did not yield information from the Tribe about the site that could have added to the notice that WSDOT or others should have taken concerning the potential difficulties presented by the site. Nor did the non-Native civic interests in Port Angeles who were promoting the site to WSDOT provide any information that would have supported concern about the site's latent cultural resources, not even in the process of conferring the City's permit under its Shoreline Substantial Development regulation.

Finally this chapter describes the archaeological monitoring plan developed by WSDOT and its consultant – the step declared both by the state Department of Archaeology and the Lower Elwha Klallam Tribe to be appropriate.

There are several lessons to be drawn from the first archaeological assessment. Their discussion is deferred for the conclusion of this memorandum.

Chapter 5

Chapter 5 describes the activities that took place from the time of the contract advertisement in February 2003 to the initial discovery of materials of archaeological interest on August 16, 2003 and the events over the next few days involving WSDOT, the Lower Elwha Klallam Tribe and many others, until construction at the site was halted on August 26, 2003. The key fact here was everyone's adherence in material respects to the monitoring plan that had previously been developed precisely to govern the situation that arose.

Chapter 6

Chapter 6 describes the extensive efforts during the period from the halt of work at the site in August 2003 and the agreements reached in mid-March 2004 to resume work at the site. These efforts were conducted principally within the framework of the so-called "inadvertent discovery" procedures of Section 106 of the National Historic Preservation Act. Investigations, consultations and deliberation, spiritual observance – all conducted by a legion of WSDOT and other representatives of the state, officials of the Tribe, consultants and advisers including a host of archeologists, lawyers and others, and also many federal officials, eventually settled agreed-upon terms on which the work would be resumed to construct the graving dock. The intensity and the scope of the consultation process that supported the work of reaching these agreements probably exceeded any precedent in Washington State.

Work at the graving dock could not have resumed but for a successful outcome of these consultation activities related in Chapter 6. Nevertheless – almost astonishingly -- that point was reached in March 2004 *still* without the full significance of what the site contained for archaeological and cultural resources having been revealed. The graving dock story would have had a much different outcome if the second assessment had brought more materials to light, even in the form of strengthened assertion from Native or non-Native communities in Port Angeles that would have raised a more forceful alert about what might have been hidden under the surface of the ground. Not that there was any lack of opportunity for more to be told about the site, given the many, many hours devoted by many, many people to the development of the agreements set forth in the March documents that restarted the project. Or, the two archaeological firms engaged in supporting this work, including the firm enlisted for this purpose by the Tribe, might have had better luck in forecasting the site's potential from their opportunity to give it renewed and thorough scrutiny.

The local newspaper reported on the events in the time period covered by Section 6 and those newspaper reports provide a unique record of the statements of many of the key

participants during that period. One important fact emerging from that chronicle is that, despite ambivalence, members of the Tribe, like others engaged in the discussions, conveyed their belief that the graving dock project should resume and continue at the Port Angeles site. Tribal members' own statements provide an important record in their own words of some of the reasons this was so.

In the end, the record assembled in Chapter 6 may be subject to a variety of interpretations. It is hard to avoid one conclusion, however, that does not portend well for future circumstances should situations like this be presented again: the so-called Section 106 process under the National Historic Preservation Act does *not* lay out very clear guidance and direction for resolving the basic issues of substance and cultural values that may enter a situation, like this, where the issues are far broader and more complex than how to handle the preservations of artifacts. In the end, the graving dock controversy and conflict was about much, much more than artifacts. Section 106 may not be a sufficiently robust ordering framework to effectively guide such a situation to successful outcomes.

Chapter 7

Chapter 7 recounts the most difficult part of the graving dock experience and is the most difficult chapter to assess. What happened on the construction site from March 2004 when work resumed until late December in that year, when it was suspended for good? This begins with the story of the start-up of the remarkable program to conduct archaeology and construction at the same time on the site – and to the extent it worked at all, and it did, it was a tribute to hard work, commitment and sensitivity of everyone involved.

But then the unexpected happened. An effort that had been envisioned principally as an archaeological investigation turned into something much different as the growing dimension of the human remains discoveries progressively shattered the aspiration toward consensus on which the program had tried to build. Pressure from the Tribe came for more and more time and resources to be spent on remains recovery. The program of construction, however, moved haltingly ahead – buoyed partly by classic concerns about schedule and cost, but also by the Tribe's affirmation, not reversed until almost mid-December, that the program should indeed continue to the completion of the graving dock.

Was there a time earlier than the third week of December 2004 when WSDOT should have stopped the program in anticipation of the direction events ultimately took during December? This is probably the hardest question to answer in the graving dock assessment. WSDOT believes that once the March agreements had been reached, and so long as the Tribe continued to support the ultimate continuation and completion of the program, a halt could not be called. Others may differ. Chapter 7 includes the “you are

there” depiction of events necessary to inform any view on this issue that anyone may offer.

Epilogue

The Epilogue is a short discussion that closes out the story from the time that the project at the graving dock was abandoned in December 2004 until the litigation in mid 2005 essentially terminated WSDOT’s consultative efforts to resolve several of the important issues left in the wake of the shutdown.

What has happened at WSDOT as a result of the graving dock experience?

The graving dock experience has joined with other factors in strengthening WSDOT’s program and management capabilities in the Section 106 and cultural resources area. New staff has been hired in order to expand the range of WSDOT’s archaeological skills. A great deal of training has been performed in the cultural resources program. WSDOT’s tribal liaison program has become increasingly active and engaged in Indian country around the state. WSDOT has continued and strengthened a strong relationship with the state Department of Archaeology and Historic Preservation and with cultural resource professionals at Federal Highway Administration and other agencies.

Since 2000, WSDOT has been a party to a Section 106 Programmatic Agreement with FHWA and the state Department of Archaeology and Historic Preservation. That agreement by its terms has been slated for updating and revision. The work of that revision has now been completed, including consultation with Tribes across the state. It will be signed shortly and it is an important document that captures many institutional improvements that the graving dock experience has helped shape. In particular, it strengthens the procedures concerning selection, performance and review of consultants in this area and makes explicit statements concerning the process of tribal consultation. On an important technical point it updates to best current practice the approach to defining the critical Section 106 point of departure, the area of potential effects, of APE.

In coming weeks another review of the graving dock experience is expected to be completed by a consultant to the Joint Legislative Audit and Review Committee following a reference from the Transportation Performance Audit Board. WSDOT anticipates that that audit will criticize aspects of WSDOT’s practice in supervising the consultant on the first site survey and the work of the consultant itself. Responses to many of those observations have by now been incorporated in WSDOT’s practice and are memorialized in the new Section 106 programmatic agreement.

DBM:jaa
Attachment

cc: Governor Gregoire